## APPENDIX

## CONNECTICUT GENERAL STATUTES § 8-8

### § 8-8. Appeal from board to court. Review by appellate court

(a) Any person or persons severally or jointly aggrieved by any decision of said board, or any person owning land which abuts or is within a radius of one hundred feet of any portion of land involved in any decision of said board, or any officer, department, board or bureau of any municipality, charged with the enforcement of any order, requirement or decision of said board, may, within fifteen days from the date when notice of such decision was published in a newspaper pursuant to the provisions of section 8-3 or 8-7, as the case may be, take an appeal to the superior court for the judicial district in which such municipality is located, which appeal shall be made returnable to said court in the same manner as that prescribed for civil actions brought to said court.

(b) Notice of such appeal shall be given by leaving a true and attested copy thereof with, or at the usual place of abode of, the chairman or clerk of said board, and by serving a true and attested copy upon the clerk of the municipality, provided service upon the clerk of the municipality shall be for the purpose of providing additional notice of such appeal to said board and shall not thereby make such clerk a necessary party to such appeal. The appeal shall state the reasons upon which it has been predicated and shall not stay proceedings upon the decision appealed from, but the court to which such appeal is returnable may, on application, on notice of the board and on cause shown, grant a restraining order.

(c) The authority issuing a citation in such appeal shall take from the appellant, unless such appellant is an official of the municipality, a bond or recognizance to said board, with surety, to prosecute such appeal to effect and

comply with the orders and decrees of the court. Said board shall be required to return either the original papers acted upon by it and constituting the record of the case appealed from, or certified copies thereof and a copy of the transcript of the stenographic or sound recording prepared in accordance with section 8-7a.

(d) The court, upon the motion of the person who applied for the board's decision, shall make such person a party defendant in the appeal. Such defendant may, at any time after the return date of such appeal, make a motion to dismiss the appeal. At the hearing on such motion to dismiss, each appellant shall have the burden of proving his standing to bring the appeal. The court may, upon the record, grant or deny the motion. The court's order on such motion shall be a final judgment for the purpose of the appeal as to each such defendant. No appeal may be taken from any such order except within seven days of the entry of such order.

(e) The court, upon an appeal taken under subsection (a) of this section, shall review the proceedings of said board and shall allow any party to such appeal to introduce evidence in addition to the contents of the record of the case returned by said board if the record does not contain a complete transcript of the entire proceedings before said board, including all evidence presented to it, pursuant to section 8-7a, or if, upon the hearing upon such appeal, it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court may take such evidence or appoint a referee or committee to take such evidence as it directs and report the same to the court, with his or its findings of fact and conclusions of law, which report shall constitute a part of the proceedings upon which the determination of the court shall be made.

(f) The court, upon an appeal taken under subsection (a) of this section and after a hearing thereon, may reverse or affirm, wholly or partly, or may modify or revise

the decision appealed from. Costs shall be allowed against said board if the decision appealed from is reversed, affirmed in part, modified or revised. Appeals from decisions of said board shall be privileged cases to be heard by the court, unless cause is shown to the contrary, as soon after the return day as is practicable.

(g) There shall be no right to further review except to the appellate court by certification for review, upon the vote of two judges of the appellate court so to certify and under such other rules as the judges of the appellate court establish. The procedure on such appeal to the appellate court shall, except as otherwise provided herein, be in accordance with the procedures provided by rule or law for the appeal of judgments rendered by the superior court unless modified by rule of the judges of the appellate court.

(h) No appeal taken under subsection (a) of this section shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the superior court and such court has approved such proposed withdrawal or settlement.

(1949 Rev., § 844; 1951, Supp. § 160b; 1955, Supp. § 379d; 1959, P.A. 460, § 2; 1963, P.A. 45; 1965, Feb. Sp. Sess., P.A. 622, § 3; 1967, P.A. 348; 1967, P.A. 712; 1971, P.A. 870, § 9, eff. Sept. 1, 1971; 1974, P.A. 74-183, § 179, eff. Dec. 31, 1974; 1976, P.A. 76-436, § 158, eff. July 1, 1978; 1977, P.A. 77-470; 1978, P.A. 78-280, § 1, eff. July 1, 1978; 1981, P.A. 81-165; 1983, June Sp. Sess., P.A. 83-29, § 13; eff. July 1, 1983; 1984, P.A. 84-227, § 1; 1985, P.A. 85-284, § 3, eff. Oct. 1, 1985; 1986, P.A. 86-236, § 2, eff. Oct. 1, 1986; 1988, P.A. 88-79, § 1, eff. April 20, 1988.)

# CONNECTICUT GENERAL STATUTES § 8-23

## § 8-23. Plan of development

The commission shall prepare, adopt and amend a plan of development for the municipality. Such plan shall show the commission's recommendation for the most desirable use of land within the municipality for residential, recreational, commercial, industrial and other purposes and for the most desirable density of population in the several parts of the municipality. Such plan may also show the commission's recommendation for a system of principal thoroughfares, parkways, bridges, streets and other public ways; for airports, parks, playgrounds and other public grounds; for general location, relocation and improvement of public buildings; for the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, sewerage, light, power, transit and other purposes; and for the extent and location of public housing projects. Such other recommendations may be made by the commission and included in the plan as will, in its judgment, be beneficial to the municipality. The plan of development shall be a statement of policies, goals and standards for the physical and economic development of the municipality, and may include all necessary and related maps, explanatory material, photographs, charts or other pertinent data and information relative to the past, present and future trends of the municipality, and may include recommended programs for the implementation of the plan, including a schedule and budget for public capital projects, and a program for enactment and enforcement of zoning and subdivision controls, building and housing codes and safety regulations, plans for implementation of affordable housing and plans for open space acquisition. In preparing such plan the commission shall consider the community development action plan of the municipality, if any, the need for affordable housing and the protection of existing and potential public surface and ground drinking water supplies, and may consider phys-

ical, social, economic and governmental conditions and trends, including, but not limited to, local, regional and state studies of the human resource, education, health, housing, recreation, social services, public utilities, public protection, transportation and circulation, cultural and interpersonal communications needs of the municipality and the objectives of energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The plan shall be designed to promote with the greatest efficiency and economy the coordinated development of the municipality and the general welfare and prosperity of its people. The commission may prepare and adopt plans for the redevelopment and improvement of districts or neighborhoods which, in its judgment, contain special problems or show a trend toward lower land values. The commission may adopt the plan of development by a single resolution or may, by successive resolutions, adopt parts of the plan, whether geographical or functional, and amendments thereto. Prior to adopting the development plan or any part thereof or amendment thereto, the commission shall file in the office of the town clerk a copy of such plan or part thereof or amendment thereto but, in the case of a district commission, such commission shall file such information in the offices of both the district clerk and the town clerk, and shall hold at least one public hearing thereon, notice of the time and place of which shall be published in a newspaper having general circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days prior to the date of each such hearing, which notice shall make reference to the filing of such records in the office of the town clerk, or both the district clerk and the town clerk, as the case may be. Any plan or part thereof or amendment thereto shall, upon adoption by the commission, be filed in the office of the town clerk, but, if it is a district plan or amendment, it shall be filed in the offices of both

the district and town clerk, and shall become effective at a time established by the commission, provided notice thereof shall be published in a newspaper having general circulation in the municipality prior to such effective date. The commission shall review the plan of development at least once every ten years and shall adopt such amendments to the plan or parts of the plan, in accordance with the provisions of this section, as the commission deems necessary to update the plan.

(1949 Rev., § 856; 1959, P.A. 577, § 6; 1969, P.A. 477, § 1, eff. Oct. 1, 1972; 1971 P.A. 862, § 5, eff. Oct. 1, 1971; 1971, P.A. 862, § 6, eff. Oct. 1, 1972; 1973, P.A. 78-314, § 3; 1980, P.A. 80-327, § 2; 1985, P.A. 85-279, § 4; 1988, P.A. 88-13, § 1, eff. March 29, 1988.)

## CONNECTICUT GENERAL STATUTES § 8-25

### § 8-25. Subdivision of land

(a) No subdivision of land shall be made until a plan for such subdivision has been approved by the commission. Any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than five hundred dollars for each lot sold or offered for sale or so subdivided. Any plan for subdivision shall, upon approval, or when taken as approved by reason of the failure of the commission to act, be filed or recorded by the applicant in the office of the town clerk within ninety days of the date such plan is delivered to the applicant, but, if it is a plan for subdivision wholly or partially within a district, it shall be filed in the offices of both the district clerk and the town clerk, and any plan not so filed or recorded within the prescribed time shall become null and void, except that the commission may extend the time for such filing for two additional periods of ninety days and the plan shall remain valid until the expiration of such extended time. All such plans shall be delivered to the applicant for filing or recording promptly after the time for taking an appeal from the

action of the commission has elapsed, and in the event of an appeal, promptly upon the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant. No such plan shall be recorded or filed by the town clerk or district clerk or other officer authorized to record or file plans until its approval has been endorsed thereon by the chairman or secretary of the commission, and the filing or recording of a subdivision plan without such approval shall be void. Before exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land. No such regulations shall become effective until after a public hearing, notice of the time, place and purpose of which shall be given by publication in a newspaper of general circulation in the municipality at least twice, at intervals of not less than two days, the first not more than fifteen days nor less than ten days, and the last not less than two days prior to the date of such hearing. Such regulations shall provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, drainage and sewerage and, in areas contiguous to brooks, rivers or other bodies of water subject to flooding, including tidal flooding, that proper provision shall be made for protective flood control measures and that the proposed streets are in harmony with existing or proposed principal thoroughfares shown in the plan of development as described in section 8-23, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width, as to provide an adequate and convenient system for present and prospective traffic needs. Such regulations shall also provide that the commission may require the provision of open spaces, parks and playgrounds when, and in places, deemed proper by the planning commission, which open spaces, parks and playgrounds shall be shown on the subdivision plan. Such regulations, on and after July 1, 1985, shall provide that proper provision be made for soil erosion and sediment

control pursuant to section 22a-329. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occuppied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multi-family dwellings, lots containing multi-family dwellings, cluster developments or planned unit developments. The commission may also prescribe the extent to which and the manner in which streets shall be graded and improved and public utilities and services provided and, in lieu of the completion of such work and installations previous to the final approval of a plan, the commission may accept a bond in an amount and with surety and conditions satisfactory to it securing to the municipality the actual construction, maintenance and installation of such improvements and utilities within a period specified in the bond. Such regulations may provide, in lieu of the completion of the work and installations above referred to, previous to the final approval of a plan, for an assessment or other method whereby the municipality is put in an assured position to do such work and make such installations at the expense of the owners of the property within the subdivision. Such regulations may provide that in lieu of either the completion of the work or the furnishing of a bond as provided in this section, the commission may authorize the filing of a plan with a conditional approval endorsed thereon. Such approval shall be conditioned on (1) the actual construction, maintenance and installation

of any improvements or utilities prescribed by the commission or (2) the provision of a bond as provided in this section. Upon the occurrence of either of such events, the commission shall cause a final approval to be endorsed thereon in the manner provided by this section. Any such conditional approval shall lapse five years from the date it is granted, provided the applicant may apply for and the commission many, in its discretion, grant a renewal of such conditional approval for an additional period of five years at the end of any five-year period, except that the commission may, in its discretion, grant a renewal period of conditional approval or renewal of such approval. Any person, firm or corporation who, prior to such final approval, sells or offers for sale any lot subdivided pursuant to a conditional approval shall be fined not more than five hundred dollars for each lot sold or offered for sale.

(b) The regulations adopted under subsection (a) of this section shall also encourage energy-efficient patterns of delevolpment and land use, the use of solar and other renewable forms of energy, and energy conservation. The regulations shall require any person submitting a plan for a subdivision to the commission under subsection (a) of this section to demonstrate to the commission that he has considered, in developing the plan, using passive solar energy techniques which would not significantly increase the cost of the housing to the buyer, after tax credits, subsidies and exemptions. As used in this subsection and section 8-2, passive solar energy techniques mean site design techniques which maximize solar heat gain, minimize heat loss and provide thermal storage within a building during the heating season and minimize heat gain and provide for natural ventilation during the cooling season. The site design techniques shall include, but not be limited to: (1) House orientation; (2) street and lot layout; (3) vegetation; (4) natural and man-made topographical features; and (5) protection of solar access within the development.

(49 Rev., § 858; Nov., 1955, Supp. § N12; 1959, P.A. 577, § 7; 1959, P.A. 669; 1971, P.A. 196; 1971, P.A. 862, § 8, eff. Oct. 1, 1971; 1975, P.A. 75-131; 1977, P.A. 77-545, § 2; 1978, P.A. 78-104, § 5; 1978, P.A. 78-314, § 4; 1979, P.A. 79-301; 1981, P.A. 81-254; 1981, P.A. 81-334, § 1; 1983, P.A. 83-388, § 8, eff. July 1, 1985; 1985, P.A. 85-91, § 4, eff. May 1, 1985; 1988, P.A. 88-203, § 2; 1988, P.A. 88-263.)

## CONNECTICUT GENERAL STATUTES § 8-26

### § 8-26. Approval of subdivision and resubdivision plans. Waiver of certain regulation requirements. Applications involving inland wetlands and watercourses

All plans for subdivisions and resubdivisions, including subdivisions and resubdivisions in existence but which were not submitted to the commission for required approval, whether or not shown on an existing map or plan or whether or not conveyances have been made of any of the property included in such subdivisions or resubdivisions, shall be submitted to the commission with an application in the form to be prescribed by it. The commission shall have the authority to determine whether the existing division of any land constitutes a subdivision or resubdivision under the provisions of this chapter, provided nothing in this section shall be deemed to authorize the commission to approve any such subdivision or resubdivision which conflicts with applicable zoning regulations. Such regulations may contain provisions whereby the commission may waive certain requirements under the regulations by a three-quarters vote of all the members of the commission in cases where conditions exist which affect the subject land and are not generally applicable to other land in the area, provided that the regulations shall specify the conditions under which a waiver may be considered and shall provide that no waiver shall be granted that would have a significant adverse effect on

adjacent property or on public health and safety. The commission shall state upon its records the reasons for which a waiver is granted in each case. The commission may charge fees for the processing of subdivision applications and inspection of subdivision improvements, the minimum fee to be fifty dollars for each application and the maximum to be twenty-five dollars for each lot within the planned subdivision. The commission may hold a public hearing regarding any subdivision proposal if, in its judgment, the specific circumstances require such action. No plan of resubdivision shall be acted upon by the commission without a public hearing. Notice of the public hearing shall be given by publication in a newspaper of general circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days prior to the date of such hearing, and by sending a copy thereof by registered or certified mail to the applicant. In addition to such notice, such commission may, by regulation, provide for notice by mail to persons who are owners of land which is adjacent to the land which is the subject of the hearing. The commission shall approve, modify and approve, or disapprove any subdivision or resubdivision application or maps and plans submitted therewith, including existing subdivisions or resubdivisions made in violation of this section, within the period of time permitted under section 8-26d. Notice of the decision of the commission shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to any person applying to the commission under this section, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. Such notice shall be a simple statement that such application was approved, modified and approved or disapproved, together with the date of such action. The failure of the commission to act thereon shall be considered as an approval, and a cer-

tificate to that effect shall be issued by the commission on demand. The grounds for its action shall be stated in the records of the commission. No planning commission shall be required to consider an application for approval of a subdivision plan while another application for subdivision of the same or substantially the same parcel is pending before the commission. If an application involves land regulated as an inland wetland or watercourse under the provisions of chapter 440,[1] the applicant shall submit an application to the agency responsible for administration of the inland wetlands regulations no later than the day the application is filed for the subdivision or resubdivision. The commission shall not render a decision until the inland wetlands agency has submitted a report with its final decision to such commission. In making its decision the commission shall give due consideration to the report of the inland wetlands agency. The provisions of this section shall apply to any municipality which exercises planning power pursuant to any special act.

(1949 Rev., § 859; 1959, P.A. 679, § 6; 1963, P.A. 55, § 2; 1963, P.A. 273, § 1; 1965, Feb.Sp.Sess., P.A., 622, § 5; 1967, P.A. 884, § 2; 1971, P.A. 862, § 9, eff. Oct. 1, 1971; 1973, P.A. 73-550; 1975, P.A. 75-40; 1977, P.A. 77-450, § 5; 1977, P.A. 77-545, § 3; 1978, P.A. 78-243, § 1, eff. July 1, 1978; 1986, P.A. 86-236, § 3, eff. May 30, 1986; 1987, P.A. 87-215, § 5, eff. July 1, 1987; 1987, P.A. 87-533, § 9, eff. July 1, 1987.)

## CONNECTICUT GENERAL STATUTES § 8-28

### § 8-28. Appeal from planning commission to superior court. Review by appellate court

(a) Notice of all official actions or decisions of a planning commission, not limited to those relating to the approval or denial of subdivision plans, shall be published in a newspaper having a substantial circulation in the municipality within fifteen days after such action or de-

[1] Section 22a-28 et seq.

cision. Except as provided in section 8-30, any person aggrieved by an official action or decision of a planning commission, including a decision to take no action, or any person owning land which abuts or is within a radius of one hundred feet of any portion of the land involved in any decision of a planning commission, may appeal therefrom, within fifteen days from the date when notice of such action or decision was so published, to the superior court for the judicial district within which the municipality with such planning commission lies. In those situations where the approval of the planning commission must be inferred because of the failure of the commission to act on an application, any person aggrieved by such approval, or any person owning land which abuts or is within a radius of one hundred feet of any portion of the land involved in such approval, may appeal therefrom within twenty days after the expiration of the period prescribed in section 8-26d for action by the commission to the superior court for the judicial district within which the municipality with such planning commission lies. Notice of such appeal shall be given by leaving a true and attested copy thereof with, or at the usual place of abode of, the chairman or clerk of said commission, and by serving a true and attested copy upon the clerk of the municipality, provided service upon the clerk of the municipality shall be for the purpose of providing additional notice of such appeal to said commission and shall not thereby make such clerk a necessary party to such appeal. The commission shall return either the original papers acted upon by it and constituting the record of the case appealed from or certified copies thereof. There shall be no right to further review except upon certification for review to the appellate court in the manner provided in section 8-8.

(b) The court, upon the motion of the person who applied for the commission's action or decision, shall make such person a party defendant in the appeal. Such defendant may, at any time after the return date of such

appeal, make a motion to dismiss the appeal. At the hearing on such motion to dismiss, each appellant shall have the burden of proving his standing to bring the appeal. The court may, upon the record, grant or deny the motion. The court's order on such motion shall be a final judgment for the purpose of the appeal as to each such defendant. No appeal may be taken from any such order except within seven days of the entry of such order.

(c) No appeal taken under subsection (a) of this section shall be withdrawn and no settlement between the parties to any such appeal shall be effective unless and until a hearing has been held before the superior court and such court has approved such proposed withdrawal or settlement.

(1949 Rev., § 861; 1951, Supp. § 165b; 1955, Supp. § 389d; 1963, P.A. 169; 1963, P.A. 273, § 2; 1965, P.A. 622, § 6; 1971, P.A. 501; 1971, P.A. 862, § 10, eff. Oct. 1, 1971; 1976, P.A. 76-436, § 294, eff. July 1, 1978; 1977, P.A. 77-450; § 7; 1978, P.A. 78-280, § 1, eff. July 1, 1978; 1980, P.A. 80-151; 1981, P.A. 81-154; 1982, P.A. 82-472, § 21, eff. June 14, 1982; 1983, June Sp.Sess., P.A. 83-29, § 59, eff. July 1, 1983; 1984 P.A. 84-227, § 2; 1985, P.A. 85-284, § 4, eff. Oct. 1, 1985; 1988, P.A. 88-79, § 2, eff. April 20, 1988; 1988, P.A. 88-364, § 75, eff. June 8, 1988.)

# LAND SUBDIVISION REGULATIONS

## of the

## TOWN OF MONROE, CONNECTICUT

In accordance with the provisions of Chapter 126 of the 1958 Revision of the General Statutes of the State of Connecticut, as amended, the Town Planning and Zoning Commission of the Town of Monroe, Connecticut, hereby adopts the following regulations as the Land Subdivision Regulations of the Town of Monroe. All prior regulations are hereby rescinded. These regulations apply to all land within the Town of Monroe. The purpose of these regulations is to provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, drainage and sewage and, that the proper provision shall be made for protective flood control measures, and that the proposed streets are in harmony with existing or proposed principal thoroughfares in said town, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width as to provide an adequate and convenient system for present and prospective traffic needs and fire safety, and to provide for open spaces for parks and playgrounds, for open spaces, for recreation, light and air.

TOWN PLANNING & ZONING COMMISSION

Marion Callo, Acting Chairman
Harry Magazian, Acting Secretary
Harry Hagan
P. John Millo
James A. Marsilio

Daniel A. Tuba, Plan. Administrator

Effective date of these regulations
January 25, 1972

Effective date of last amendment
March 1, 1976

3.4 *Open Spaces*: In subdivisions proposed for residential development, open spaces for parks and playgrounds shall be provided in places deemed proper by the Commission. Such open spaces shall be offered to and accepted by the Town. Land reserved for open spaces shall be of such size, location, shape, topography and general character as to be useful to satisfy the needs determined by the Commission. Proper pedestrian and vehicular access shall be provided for each such reservation. Reservation of land shall conform to any Town Master Plan pertaining to parks, playgrounds, recreation areas and open spaces.

The Commission in requiring the provision of open space shall consider the proper development of the Town, the density of population and existing public open spaces in the vicinity of the subdivision. No loam, fill or natural growth shall be removed from the area reserved for open space, and no foreign matter shall be permanently placed upon said space unless required by the Commission in connection with the grading, construction or development of the subdivision.

SUPERIOR COURT
JUDICIAL DISTRICT OF FAIRFIELD
AT BRIDGEPORT

SEPTEMBER 22, 1993

---

CV92 0293224 S
CV92 0294797 S

TOWN OF MONROE

v.

JOHN MANDANICI, JR., *et al.*

---

## MEMORANDUM OF DECISION

Two cases of foreclosure of tax liens have been filed by the Town of Monroe against premises owned by the defendant John A. Mandanici, Jr. and known as 2 and 36 Fairlea Drive. The plaintiff alleges unpaid tax liens for October 1, 1986, October 1, 1987, October 1, 1988, October 1, 1989 and October 1, 1990 on both lots. The defendant Mandanici answers in both cases are duplicates and consist of an admission of ownership and a denial of the remaining allegations. By way of counterclaim the defendant alleges that the Town by duress and imposition in 1986 caused him to agree to deed to the town 1.26 acres of open space land in order to have the subdivision, of which the open space land was a part, approved. He further claims that that parcel of land did not advance a legitimate state interest of the Town relative to the subdivision regulations, violates Article 1, Section 11 of the Connecticut Constitution and the Fifth and Fourteenth Amendments of the United States Con-

stitution, that the Town is unjustly enriched and that the Town holds the parcel in constructive trust for the defendant. By way of set off, the defendant alleges that by duress and imposition the plaintiff forced the defendant to spend money and incur costs in making additional and unnecessary improvements to the road, landscape and drainage system in the subdivision which was not part of the original approval.

Since both cases are exactly alike and the cases have been tried as one, this one Memorandum of Decision shall apply to both cases. The parties have stipulated that Lot No. 4 Fairlea Drive, Monroe, has a fair market value of $85,000.00 and Lot No. 8 Fairlea Drive, Monroe, has a fair market value of $95,000.00. They have also stipulated that $14,861.25 is the total amount of town taxes, interest and fees due on Lot No. 4 and $13,235,28 is the total amount of town taxes, interest and fees due on Lot No. 8 and that both amounts are unpaid. On the basis of the facts stated, the plaintiff is entitled to a foreclosure of its tax liens on both lots. The issue therefore is the counterclaim and set off filed by the defendant.

The court will cover the Set Off first since it will not require an extended discussion. The defendant claims that by duress and imposition he spent money and incurred costs in making additional and unnecessary improvements to the road, landscape and drainage systems, which were not part of the town' original approval. No evidence has been produced to indicate that he spent money or incurred costs of any kind, or that any additional and unnecessary improvements to the road, landscape or drainage systems were made. In fact, the Town's original approval containing its requirements for the subdivision were never submitted to the court nor was any evidence introduced of additional costs and unnecessary improvements being required by the Town or made by the defendant. This claim is without merit and judgment may enter for the plaintiff on the defendant's Set Off.

With respect to the question of the taking of an open space of 1.26 acres, the facts are found as follows. In 1976 the defendant was a partner of one Iannucci in the planned subdivision, and Iannucci submitted the subdivision map to the Town Planning and Zoning Commission (PZC) which contained the 1.26 acres area which was designated as open space and which the Land Division Regulations required and which reads as follows:

> 3.4 *Open Spaces*: In subdivisions proposed for residential development, open spaces for parks and playgrounds shall be provided in places deemed proper by the Commission. Such open spaces shall be offered to and accepted by the Town. Land reserved for open spaces shall be of such size, location, shape, topography and general character as to be useful to satisfy the needs determined by the Commission. Proper pedestrian and vehicular access shall be provided for each such reservation. Reservation of land shall conform to any Town Master Plan pertaining to parks, playgrounds, recreation areas and open spaces.
>
> The Commission in requiring the provision of open space shall consider the proper development of the Town, the density of population and existing public open spaces in the vicinity of the subdivision. No loam, fill or natural growth shall be removed from the area reserved for open space, and no foreign matter shall be permanently placed upon said space unless required by the Commission in connection with the grading, construction or development of this subdivision.

The Submission of the parcel was not suggested or requested by anybody employed or authorized by the Town. It was offered by Iannucci because the subdivision regulations required it. The subdivision met with no success until 1986 when the defendant submitted the same map and a deed for the 1.26 acre parcel. Although the defend-

ant describes the lot as a building lot, it does not contain the required 150 foot frontage on the highway, and could not be used unles a variance of that requirement was granted. The subdivision contained thirteen acres and had been subdivided into eleven lots, one of which was the parcel in issue and represented approximately ten per cent of the development which the PZC was requiring of all subdivisions of ten or more lots and for which the PZC usually required ten per cent of the total acreage. It is the defendant's claim that he did not want to give the parcel and that the PZC would not consider the subdivision unless the parcel was forthcoming and so the defendant furnished them with the deed. The parcel has not been used in any manner by the Town or anyone else nor had it been used as a park or playground which section 3.4 specifies. However, the Land Subdivision Regulations provide as follows: ". . . and to provide for open spaces for parks and playgrounds, for open spaces for recreation, light and air."

This court has difficulty in following the defendant's argument that he was subjected to duress and imposition. The zoning regulation required providing for open spaces for parks and playgrounds and for recreation, light and air. Iannucci provided such an area when he submitted the original map in 1976 when the defendant was his partner. That same map was used for each presentation to the PZC including the last one in 1986, without any change. The defendant never said to the PZC he would not set aside such an area and he continued to provide at every opportunity. The Town counsel, when he insisted on the defendant providing a deed for that lot, was simply following the mandate of the subdivision regulations, which would enable the applicant to present an acceptable application. The defendant was never told he must deed the lot, he was told it was a requirement of the subdivision regulations. It was defendant's statement that he was under duress "because I had to give up something," however he admits he asked no official about

open spaces because it was in the regulations. "Where one insists on a payment which he honestly believes he is entitled to receive, certainly unless that belief is without any reasonable ground, his conduct is not wrongful and does not constitute duress." *Smedley Co. v. Lansing,* 35 Conn. Supp. 578, 580. The town attorney honestly believed the PZC was entitled to receive the open space by virtue of the subdivision regulations and that belief was reasonable and therefore his conduct was not wrongful and did not constitute duress. See *Crittenden v. Royce,* 100 Conn. 617. "It is inherent in duress that the acts or threats, claimed to constitute, it should be wrongful. Restatement Contracts, Vol. 2 (492, Par. (g), p. 941." *Werner v. Minor,* 124 Conn. 92, 95. "Where one insists on a payment which he honestly believes he is entitled to receive, certainly unless that belief is without any reasonable ground, his conduct is not wrongful and does not constitute duress." *Werner v. Minor,* supra, 95. The defendant has failed to demonstrate duress by a preponderance of the evidence, or by any other degree of evidence.

The next issue raised by the defendant is that the regulation is unconstitutional in that it did not substantiate a legitimate town interest. The defendant first states that the regulations' constitutionality does not have to be considered since the taking was outside the scope of § 3.4 which only allowed a taking of open spaces for parks and playgrounds and not to provide a vacant lot. The PZC regulations must be read as a whole and include the statement preceding § 3.4 to the effect that they are to provide for open spaces for parks and playgrounds, for open spaces for recreation, light and air. While the lot has had no alterations or improvements to it since 1986, it could, if and when the need develops, become a park or playground. Just leaving it undeveloped does not mean that it could not at the appropriate point be developed into a park or playground. In addition, as it exists now, it provides light and air, two of the purposes of the regu-

lations. The defendant claims that *Nollan v. California Coastal Comm.*, 483 U.S. 825, 841, is controlling, wherein the court stated: ". . . our cases describe the condition for abridgement of property rights through the police power as a substantial advancing of a legitimate state interest." That case differs from the instant case in that the Commission made the issuance of a building permit conditional on a public easement for passage of the public to the beach. This restriction is applicable to all of the landowners' land i.e. the open space and is a restriction created specially for this piece of property and not of all property owners. The instant case concerns one lot out of eleven and the restriction is applied equally to every subdivision of more than ten acres or ten lots in the town, and in accordance with Nollan, it substantially advances a legitimate state and town interest, declared in § 8-23 Connecticut General Statutes entitled "PLAN OF DEVELOPMENT", and § 8-25 Connecticut General Statutes "Subdivision of Land" which provides for open spaces, parks and playgrounds. *Aunt Hack Ridge Estates, Inc. v. Planning Commission,* 160 Conn. 109 held that a similar regulation requiring the land be set aside for open space, parks and playgrounds was valid and constitutional exercises of the police power of the town and the state statutes. "The party challenging a statute's constitutionality has a heavy burden of proof. The unconsitutionality must be proven beyond all reasonable doubt." *Bottone v. Westport,* 209 Conn. 652, 657, "if the ordinance is otherwise a valid exercise of the town's police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional." *Russo v. East Hartford,* 179 Conn. 250, 258. "We have held that a commission's power to regulate the use of land, where reasonable and important, does not constitute a taking of property without due process of law or just compensation. . . . Where the free exercise of one's rights of property is detrimental to the public interest, the State has the right to regulate reasonably

such exercise of conrol under the police power. . . . One who chooses to engage in subdividing land by that decision thus chooses also to be subject to the reasonable regulation of the local planning commission." *Whittaker v. Zoning Board of Appeals,* 179 Conn. 650. The unconstitutionality of the PZC's zoning regulations with respect to the requirement for open spaces, parks and playgrounds has not been proven beyond all reasonable doubt. The lot is a "passive park", i.e., it is set aside for that purpose and can be utilized at any point. The "Plan of Development" of Monroe provides in ¶ 6 . . . "*Recreation and Open Space.* Opportunities for passive and active recreation in locations accessible to residents and preservation of the ecological balance and exhaustible natural resources of the area are essential to the continued health and economic well being of the community." That section sets as policy that open space be within a reasonable distance of all residents' homes, and that recreational facilities and programs should be available; and that the town adopt a schedule of open space acquisition providing for all types of activities. It therefore serves legitimate governmental purposes and substantially advances legitimate state and town interests, both which are described in the state statutes in § 8-23 and § 8-25 of the Connecticut General Statutes and the PLA Regulations, and which are a valid exercise of the town's police powers. See *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365; *Agins v. City of Tiburon,* 447 U.S. 259, 261 n.8.

Because of the rulings hereinbefore made, it is not necessary to discuss the defendant's claim of a constructive trust of the lot and the remedy therefore.

Query as to whether the defendant's counterclaim is legally involved in this case since, while the counterclaim arises out of the same subdivision, the complaint involves two lots of the subdivision on which taxes are due and owing and the counterclaim involves a third lot which was deeded for open space. It would appear that the com-

plaint and counterclaim do not arise out of the same transaction, nor do they arise out of any transaction which is the subject of the plaintiff's complaint.

Judgment may enter for the plaintiff on the complaint granting a strict foreclosure on the premises known as 2 Fairlea Drive for the tax liens for October 1, 1986, 1987, 1988, 1989 and 1990. The total debt due thereon is found to be $14,861.25 which includes interest and fees as of August 2, 1993. The value of the premises is found to be $85,000.00. The law day for the defendant landowner is set as February 8, 1994, for the encumbrancer Federal Deposit Insurance Corporation as February 10, 1994, and for the encumbrancer New England Building Products, Inc. February 9, 1994. A strict foreclosure on 36 Fairlea Drive may enter for the tax liens of October 1, 1986, 1987, 1988, 1989 and 1900. The total debt found to be due thereon is found to be $13,235.28 as of August 2, 1993, including interest and fees. The value of the premises are found to be $95,000.00. The law day for defendant landowner is set as February 8, 1994, for the encumbrancer New England Building Product, Inc. February 9, 1994, and for the defendant the Gateway Bank the date of February 10, 1994, on its mortgage dated October 24, 1990; February 11, 1994 on its mortgage dated July 21, 1989 and February 12, 1994 on its mortgage dated October 24, 1988.

Judgment may enter for the plaintiff on the Counterclaim and Set Off together with costs. The plaintiff is further entitled to recover interest from August 2, 1993 to the day of redemption.

/s/ Levine
LEVINE
State Trial Referee

APPELLATE COURT
OF THE STATE OF CONNECTICUT

---

JUDICIAL DISTRICT OF FAIRFIELD

---

No. A.C. 12922

---

TOWN OF MONROE

v.

JOHN C. MANDANICI

---

# BRIEF OF THE DEFENDANT/APPELLANT JOHN C. MANDANICI

---

JOSEPH R. MIRRIONE
Attorney at Law
55 Trumbull St.
P.O. Box 9444
New Haven, CT 06534
562-4386

To Be Argued By:

Joseph R. Mirrione

* * * *

he stated—to make it simple—he said it's much more politic to give them what they want in order to get your approval" (T 40-43). The trial court also stated that the court was "sure" that the Plaintiff's counsel was "perfectly aware of everything Mr. Mandanici said." (T 42).[1]

On redirect examination, Attorney Mandanici testified that Iannucci offered the 1.26 acres in the 1977 application map in order to get into the "good graces" of the Plaintiff, "the more you give the Town, the more likely they are to approve the subdivision." (T 49-50). On recross examination, Attorney Mandanici testified that he considered the open spaces that was deeded to the Plaintiff to be "what you might call the ransom to get the subdivision approved." (T 52).

* * * *

---

[1] The Defendant's trial counsel objected to the question as to why the open space issue had not been raised earlier. He stated that such a question goes to the defense of laches which had not been pleaded as a special defense to the counterclaim. The trial court at the very beginning of the trial ruled that it would not consider the defense of laches because it had not been pleaded. However, the trial court allowed the question not for the issue of laches since it was not before the court, but for the issue of duress which was before the court (T 7-8, 36-39).

SUPERIOR COURT
J.D. OF FAIRFIELD
AT BRIDGEPORT

AUGUST 13, 1993

---

CV 92-293224
CV 92-294797S

TOWN OF MONROE

vs.

JOHN C. MANDANICI, *et al.*

---

## DEFENDANT'S REPLY AND SUPPLEMENTAL BRIEF

The Plaintiff in its initial Brief dated July 14, 1993, pp. 2-3, states that the Conn. Gen. Stat., Sec. 8-25 allowing for the taking of open spaces does not violate any of the Defendant's constitutional rights. However, of the 4 cases cited by the Plaintiff, the last two, *Michael Weatherly v. Town Plan and Zoning Commission of Fairfield,* 23 Conn. App. 115 (1990) and *Raybestos Manhattan v. Planning & Zoning Commission of Trumbull,* 186 Conn. 466 (1982) are not on point because they concern the taking of roads which are essential to a subdivision.

The other two cases cited, *Aunt Hack Ridge Estates v. Planning Commission of the Town of Danbury,* 27 Conn. Supp. 74 (1967), and *Aunt Hack Ridge Estates v. Planning Commission of the City of Danbury,* 160 Conn. 109 (1970), are apparently the

* * * *

holds that whenever a landowner must yield a property interest to get zoning permission such a "yielding of the property interest cannot be regarded as establishing (a) voluntary exchange." *Nollan, supra,* 483 U.S. at 834, footnote 2.

Furthermore, the person who offered the land in 1977, Lawrence Iannucci, obviously did not do it out of the goodness of his heart nor did he come to the 10% figure all on his own since the 10% figure was, according to Tuba, the going rate that the Town or Mr. Tuba would demand in order to approve such a subdivision.

When the land was offered in 1977, the cost of the land was not of much significance if the Town approved the subdivision and allowed the owners to develop it to its full potential at that time. The cost of the lot might be a normal expected business cost if the subdivision was approved in a normal fashion. When the owners offered the land in 1977, no one could foresee how far from the normal the whole procedure would be in order to finally get approval. The owners submitted 4 different subdivision applications all of which were rejected by the Town. There were 4 applications and 4 appeals all with legal costs and expenses. The owners prevailed on the second appeal in 1986 (See *Iannucci v. Planning & Zoning Comm. of Monroe*, Fairfield J.D. No. 118024). What might have been close to being a voluntary act in 1977 of offering the land in exchange for quick approval was no longer a voluntary act in 1986 when the land was deeded to the Town because the court costs and the cost of the delay of 9 years had caused a great loss in project's profits and a donation of a $50,000.00 piece of land now took on much greater dimension.

In 1986 after the appeal was won on other issues, and the matter was remanded for a new hearing where the application could again be rejected still on other grounds, the Town demanded the 1.26 acres as a condition of it approving the subdivision. The *Nollan* case had not yet

been decided. If the Defendant wanted to make an issue of the 1.26 acres, and refused to deed it to the Town then the Town clearly would have denied the application. After 9 years of delays, the Defendant could not afford any more delays and chose not to make an issue of the 1.26 acres so that he could finally develop the rest of the subdivision.

Since *Nollan* describes some zoning boards as having "an out and out plan of extortion" in getting landowners to give up

* * * *

# PLAN OF DEVELOPMENT
# MONROE, CONNECTICUT

## 1976

*Recreation and Open Space*

Opportunities for passive and active recreation in locations accessible to residents, and preservation of the ecological balance and exhaustible natural resources of the area are essential to the continued health and economic well-being of the community. Serious consideration should be given to acquiring and developing land for water oriented recreation along the shore of Lake Zoar.

*Policies*

1. Some publicly accessible open space should be within reasonable distance of all resident's homes and major centers of employment.

2. A variety of recreational facilities and programs should be available to residents of all ages.

3. The Town should adopt a schedule of open space acquisition, preserving outstanding features, such as brooks and streams, providing for activities such as walking, skating, bicycling and riding, and reserving land topographically unsuited for intensive development.

4. It is desirable for the Town to control brooks and streams, to preserve the storm run-off system and to assure town access for maintenance of stream flow. This can be accomplished in part through Subdivision Regulations, and through cluster development design.

5. Recreation facilities should be available for use over the longest periods of time that are feasible.

6. Bikeways, both separate and as a part of the Town roadway system, should be provided to connect recreation,

open space and other public facilities with existing and new subdivisions and other urban residential areas.

Planning for open space should be coordinated with the Conservation Commission, with consideration for and co-operation with State and other groups and individuals working for the preservation of open space and natural resources.

A reasonable percentage of each subdivision should be permanently reserved for open space.

The location of open space should be related to and consistent with the goals of the Plan of Development, and of the Conservation Commission, and other recognized open space plans. The inclusion of small land areas as open space should be avoided, except where they serve a desirable and specific purpose, or where they are part of a long range goal.